In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1305

ANTRONIK PAROUTIAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, having waived trial by jury, was convicted by the United States District Court for the Eastern District of New York on two counts of an indictment charging narcotic violations. He was sentenced to imprisonment for concurrent twenty-five year terms and fined $20,000 on each count. The court of appeals affirmed, 319 F.2d 661, certiorari denied, 375 U.S. 981.[1]

[1] This was petitioner's second trial. His first conviction had been reversed. 299 F.2d 486.

Between June 21, 1960 and August 18, 1960, while he was awaiting trial, petitioner shared a cell with Luiz De Almeida. At the trial, De Almeida testified that petitioner told him about importing narcotics into the United States and depositing the profits in Swiss banks. The trial judge made specific findings of fact in ruling that this testimony was admissible. He found that the assignment of witness De Almeida and defendant to the same cell was "in no way initiated, planned, procured" by government law enforcement officials "except the officials of the Federal House of Detention in pursuance of the ordinary and usual procedure"; that on July 18, 1960, De Almeida advised a narcotic agent (one who did not know of petitioner or of his case) of admissions made by petitioner concerning his narcotic operations; that on July 19, 1960, De Almeida revealed "the substance of the conversation theretofore had with the defendant"; and that the admissions were "voluntarily made, and were not known to the government until July 19, 1960." The court, after considering the fact that De Almeida had been advised to continue conversing with petitioner with a view to planting the narcotic agent in the narcotic trade, found that no admissions of petitioner made after July 19, 1960 were introduced in evidence. The court accordingly rejected the argument that petitioner's right to counsel had been violated by reason of his conversations with De Almeida during the period of June 21, 1960 to July 19, 1960 (G. A. 9-15).

Following the affirmance of his conviction, petitioner filed an application for a writ of habeas corpus,

treated below as a motion to vacate sentence under 28 U.S.C. 2255. Relying on *Massiah* v. *United States*, 377 U.S. 201, he contended that the government had improperly offered in evidence his post-indictment admissions to De Almeida. The district court rejected his contention, noting that it had previously held a hearing on the same issue (G.A. 1-3). The court of appeals affirmed, pointing out that "[i]t is clear that De Almeida was not a government agent at the time that appellant made the incriminating statements to which De Almeida testified."

Further review of this case is not warranted. It is not comparable to *Massiah* v. *United States*, 377 U.S. 201, in which a secret government informer "deliberately elicited" statements from the defendant. Here the government took no steps to obtain the admissions from petitioner; it merely utilized unsolicited statements volunteered by petitioner to a person unconnected with the government. As for the twenty-four hour period between June 18 (the date that De Almeida first communicated with the federal authorities), and June 19 (the date that De Almeida made his detailed statement), there is no evidence that further admissions were sought or obtained during that time. The fact that De Almeida was subsequently used by the government to obtain information does not bear on the admissibility of admissions made by petitioner previously thereto.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

RALPH S. SPRITZER,
*Acting Solicitor General.**

MAY 1967.

* In lieu of the Solicitor General who has disqualified himself.

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